



## Proposed Regulation Agency Background Document

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| <b>Agency name</b>                                 | Commission on Local Government  |
| <b>Virginia Administrative Code (VAC) citation</b> | 1 VAC 50 - 10   |
| <b>Regulation title</b>                            | Public Participation Guidelines   |
| <b>Action title</b>                                | Amend the public participation guidelines of the Commission on Local Government |
| <b>Document preparation date</b>                   |   |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.*

The public participation guidelines of the Commission on Local Government, which were last amended in 1984, are being updated to reflect changes in the Administrative Process Act and modern practice. The changes proposed include revisions to outdated or obsolete provision and inclusion of new procedures to enhance public participation in the amendment to the Commission's regulations in the future.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

§ 15.2-2903, Code of Va. gives the Commission on Local Government the discretionary authority to "...make regulations, including rules of procedure of procedure for the conducting of hearings." The

Commission on Local Government within the Department of Housing and Community Development is the promulgating entity.

**Purpose**

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.*

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The proposed regulations are not essential to protect the health, safety, or welfare of citizens.

The proposed action is to update the public participation guidelines of the Commission on Local Government. The Commission’s current guidelines were last revised in November 1984. Since that date, there have been several changes to the Administrative Process Act, as well as the creation of the Administrative Code, that are not reflected in the current public participation guidelines (e.g., Internet, electronic mail, etc.). In addition, there are some outdated provisions in the current guidelines that should be reviewed for possible revision. Further, when the Administrative Code was created in the early 1990s, the Commission’s regulations were integrated into the VAC without input from the Commission or its staff. Moreover, when the original public participation guidelines were adopted, the Commission had been active in the resolution of interlocal issues for only three years, whereas today, the Commission has been in existence for over 20 years and some of its procedures may need to be revised to reflect changing times.

**Substance**

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the “Detail of changes” section.)*

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Out-of-date provisions adopted in 1984 are repealed. New provisions, such as purpose, definitions, creation of notification lists, notice of intent to revise regulations, notification of actions, and advisory committees, are added.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

*If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.*

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There are no disadvantages to the Commonwealth. The primary advantage to the Commonwealth will be to enhance the public participation in the development of the Commission’s regulations in the future.

Unless private citizens or businesses are interested in the development of Commission regulations in the future, the new provisions would have no impact on them.

The proposed regulatory action poses no disadvantage to the public, but will have a public benefit by modernizing the public participation guidelines.

There are no disadvantages to localities, but will benefit local governments by modernizing the public participation guidelines.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

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| <b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b> | Not applicable. |
| <b>Projected cost of the regulation on localities</b>  | Not applicable. |
| <b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>  | Not applicable. |
| <b>Agency’s best estimate of the number of such entities that will be affected</b>   | Not applicable. |
| <b>Projected cost of the regulation for affected individuals, businesses, or other entities</b>  | Not applicable. |

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

There is no alternative to amending the regulations except to continue to use the current outmoded provisions.

**Public comment**

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

No public comment was received.

| Commenter | Comment | Agency response |
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### Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The proposed regulatory action will have no impact on the institution of the family and family stability.

### Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

| Current section number | Proposed new section number, if applicable | Current requirement  | Proposed change and rationale   |
|------------------------|--|--|---|
| 1 VAC 50-10-10         |  | Subsequent to any announcement of a proposal to amend its regulations as provided in 1 VAC 50-20-680 through 1 VAC 50-20-700, but prior to the development of any proposed amendments, the commission shall:<br><br>1. Publish notice of the proposal to amend its regulations in the Virginia Register of Regulations or in any successor | Repeal and replace with provision that reflect Administrative Process Act and EO21(02). |

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|                           |  | <p>publication;</p> <p>2. Publish notice of the proposal to amend its regulation in a newspaper of general circulation in the City of Richmond area and in other newspapers or periodicals which the commission deems appropriate for the provision of suitable public notice;</p> <p>3. Distribute press releases and announcements of the proposal to amend its regulations to other newspapers and media throughout the Commonwealth as the commission deems appropriate for the provision of suitable public notice;</p> <p>4. Notify by letter, mailed prior to the publication of notice provided for in subsection 1 herein, to each potentially interested party listed in 1 VAC 50-10-20.</p> |  |
| <p>1 VAC<br/>50-10-20</p> |  | <p>The commission shall consider as potentially interested parties for purposes of its public participation process the following entities:</p> <p>1. The Virginia Municipal League and the Virginia Association of Counties;</p> <p>2. Any law firm, consulting entity, or other intermediary which is known by the commission to have represented or to have prepared data, exhibits, or testimony for any party previously appearing before it;</p> <p>3. Any firm, group,</p>  | <p>Repeal and replace with provision that reflect Administrative Process Act and EO21(02).</p> |

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|                |  | <p>association, or other entity which has advised the commission of interest in its work; and</p> <p>4. Any other entity considered by the commission to be affected by the proposed amendments.</p>   |  |
| 1 VAC 50-10-30 |  | <p>The notifications provided for in 1 VAC 50-10-10 shall advise of the commission's proposal to amend its regulations and shall state the scope and nature of the amendments to be considered. The notifications shall solicit comment, data, and views from all interested parties on the proposed amendments. The notifications shall also specify the date, place, and time at which the commission will begin to formulate proposed amendments and the latest date, which shall be not less than 60 days after the publication of notice provided for in 1 VAC 50-10-10, by which interested parties may submit materials to the commission for review with respect to the proposed amendments.</p> | <p>Repeal and replace with provision that reflect Administrative Process Act and EO21(02).</p> |
| 1 VAC 50-10-40 |  | <p>The commission shall hold one or more public hearings for the receipt of oral comment on proposed amendments from interested parties prior to their final adoption.</p>   | <p>Repeal and replace with provision that reflect Administrative Process Act and EO21(02).</p> |
| 1 VAC 50-10-50 |  | <p>By the adoption of this regulation the commission intends to afford all interested parties an opportunity to participate to the fullest in the initial formation, promulgation, and adoption of all amendments to its regulations.</p>  | <p>Repeal and replace with provision that reflect Administrative Process Act and EO21(02).</p> |

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|                 | 1 VAC 50-10-60 | No procedure is currently stipulated in the Regulations.   | <p>Add provision delineating purpose and authority for issuing public participation guidelines.</p> <p><u>This chapter establishes public participation guidelines for soliciting input from interested parties in the formation, development and revision of regulations by the Commission on Local Government. These guidelines are required under §2.2-4007 of the Code of Virginia (Administrative Process Act). The guidelines do not apply to any regulations adopted on an emergency basis or to other regulations excluded from the operation of Article 2 of the Administrative Process Act under §2.2-4006 of the Code of Virginia.</u></p>  |
|                 | 1 VAC 50-10-70 | No procedure is currently stipulated in the Regulations.   | <p>Add definitions section as recommended by the Virginia Code Commission.</p> <p><u>The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:</u></p> <p><u>“Administrative Process Act” means Chapter 40 (§2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.</u></p> <p><u>“Commission” means the Commission on Local Government.</u></p> <p><u>“Person or persons” means an individual, a corporation, a partnership, an association, a government body, a municipal corporation, a political subdivision, or any other legal entity.</u></p>   |
| 1 VAC 50-20-680 | 1 VAC 50-10-80 | The commission may, by majority vote of its membership, announce a decision to propose amendments to its regulations of procedure at any regular or special meeting. The commission, however, shall develop and adopt amendments to its regulations only in accordance with the public participation process; 1 VAC 50-10-10 et seq. | <p>Expands current regulation to give citizens the opportunity to petition the Commission to promulgate new regulations or amend existing regulations.</p> <p><u>A. The commission may, by majority vote of its membership, announce a decision to propose amendments to its regulations at any regular or special meeting.</u></p> <p><u>B. Any person may petition the commission to promulgate new regulations, or to amend existing regulations subject to §2.2-4007 A of the Code of Virginia. The commission shall consider and respond to the petition pursuant to §2.2-4007A of the Code of Virginia within 90 days of receipt. The commission shall have sole authority to dispose of the petition.</u></p> |
|                 | 1 VAC 50-10-   | No procedure is currently  | Add provision to establish a contact list of   |

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|  | 90              | stipulated in the Regulations.                           | <p>those entities that wish to be notified at the time the Commission considers modification of its regulations.</p> <p><u>The commission shall establish and maintain lists of persons who shall be mailed the following documents, or notification of how to obtain a copy of the documents electronically, as they become available:</u></p> <ol style="list-style-type: none"> <li>1. <u>“Notice of Intended Regulatory Action” to promulgate, amend or repeal regulations.</u></li> <li>2. <u>“Notice of Comment Period” and public hearings.</u></li> <li>3. <u>Notice that final regulations have been adopted.</u></li> </ol> <p><u>Failure of a person to receive the documents or notification for any reason shall not affect the validity of any regulations otherwise properly adopted by the commission under the Administrative Process Act.</u></p>  |
|  | 1 VAC 50-10-100 | No procedure is currently stipulated in the Regulations. | <p>Add provision that specifies which entities are to be included on the notification list created by 1 VAC 50-10-90.</p> <p><u>A. The notification list maintained by the commission shall include, as a minimum, the following:</u></p> <ol style="list-style-type: none"> <li>1. <u>The Virginia Municipal League and the Virginia Association of Counties;</u></li> <li>2. <u>Any law firm, consulting entity, or other intermediary which is known by the commission to have represented or to have prepared data, exhibits, or testimony for any party previously appearing before it;</u></li> <li>3. <u>Any firm, group, association, or other entity which has advised the commission of interest in its work; and</u></li> </ol> <p><u>B. Any other person wishing to be placed on the notification list may do so by electronic notification or by writing the commission. In addition, the commission at its discretion may add to the list any person it believes will serve the purpose of responsible participation in the formulation or promulgation of regulations. Each person on the list will be provided all information stated in 1VAC50-10-90. A person periodically may</u></p> |

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|  |                 |  | <p><u>be requested to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, the person will be deleted from the list. When electronic notifications are returned as undeliverable over more than one day, the person may be deleted from the list.</u></p>   |
|  | 1 VAC 50-10-110 | No procedure is currently stipulated in the Regulations. | <p>Add provision concerning the publication of a Notification of Intended Regulatory Action.</p> <p><u>At least 30 days prior to filing the “Notice of Comment Period” and proposed regulations as required by §2.2-4007 of the Code of Virginia, the commission will publish a “Notice of Intended Regulatory Action.” This notice will provide at least a 30-day comment period and shall state whether the commission intends to hold a public hearing. Further, the notice shall describe the subject matter and intent of the planned regulation. Such notice shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register of Regulations.</u></p>   |
|  | 1 VAC 50-10-120 | No procedure is currently stipulated in the Regulations. | <p>Add provision that calls for regular review of the Commission’s regulations. Currently, there is no such requirement and consequently the Commission’s regulations have not be updated since 1984.</p> <p><u>Within two years of the promulgation of a regulation, the commission shall evaluate it for effectiveness and continued need. The commission shall conduct an informal proceeding, which may take the form of a public hearing, to receive public comment on existing regulations. Notice of such proceedings shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register of Regulations. Such proceedings may be held separately or in conjunction with any other meeting of the commission.</u></p> |
|  | 1 VAC 50-10-130 | No procedure is currently stipulated in the Regulations. | <p>Add provision concerning the process by which the Commission will in the formulation or adoption of regulations.</p> <p><u>At any meeting of the commission where it is anticipated the formation or adoption of a regulation will occur, the subject matter shall be transmitted to the Registrar for inclusion in the Virginia Register.</u></p> <p><u>If one or more changes have substantial</u></p>  |

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|  |                        |   | <p><u>impact on a regulation, then any person may petition the commission within 30 days from the publication of the final regulation to request an opportunity for oral or written submittals on the changes to the regulation. If the commission receives requests from at least 25 persons for an opportunity to make oral or written comments, then the commission shall suspend the regulatory process for 30 days to solicit additional public comment, unless the commission determines that the changes made are minor or inconsequential in their impact.</u></p> <p><u>If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may suspend the regulatory process for 30 days to require the commission to solicit further public comment on the changes to the regulation.</u></p> <p><u>A draft of the commission's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.</u></p> |
|  | <p>1 VAC 50-10-140</p> | <p>No procedure is currently stipulated in the Regulations.</p> | <p>Add provision that gives the Commission the authority to create an advisory committee to assist in the regulatory process.</p> <p><u>The commission may appoint an ad hoc advisory committee as it deems necessary to provide adequate participation in the formation, promulgation, adoption, and review of regulations. The advisory committee shall only provide recommendations to the agency and shall not participate in any final decision-making actions on a regulation.</u></p> <p><u>When identifying potential advisory committee members, the commission may use the lists of persons who have previously participated in public proceedings concerning this or a related issue.</u></p>   |
|  | <p>1 VAC 50-10-150</p> | <p>No procedure is currently stipulated in the Regulations.</p> | <p>Add provision that specifies that the public participation guidelines will apply to the promulgation and adoption of the Commission's regulations.</p> <p><u>1VAC50-10-80, 1VAC50-10-90, 1VAC50-10-100, 1VAC50-10-120, 1VAC50-10-130 shall apply to all regulations promulgated and adopted in accordance with §2.2-4012 of the</u></p>   |

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|  |  |  | <u>Code of Virginia, except those regulations promulgated in accordance with §2.2-4002, 2.2-4006, 2.2-4011, 2.2-4012.1, 2.2-4018, or 2.2-4025 of the Code of Virginia.</u> |
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